REMARKS

Formal Matters

Telephone Interview

The Applicant and the undersigned attorney thank the Examiner for the brief telephone interview conducted on 14 October 2003. In the course of the interview the Examiner explained his view of the references used against the Application. Claims were not discussed.

Timeliness of Response

The Office Action was mailed on 25 July 2003, and set a three months period for response. This Amendment is being filed within the three months period. Therefore, it is timely and no extension fees are due.

Use of Trademark

In the Office Action the Examiner noted that the trademark MONOPOLY® used in the specification should be capitalized and its proprietary nature should be respected. Accordingly, the specification has been amended to accompany the mark with the symbol "®" and to capitalize it throughout the specification.

New Claims

Claims 109-154 have been added to better define the invention.

Substantive Matters

Claims 1-4, 7, 9, 17-20, 23, 25, 33, 35-37, 45, 47-49, 81-85, & 95-99

Turning next to art rejections, the Examiner rejected claims 1-4, 7, 9, 17-20, 23, 25, 33, 35-37, 45, 47-49, 81-85, and 95-99 under 35 U.S.C. § 102(a) as being anticipated by Online MONOPOLY® offered by playsite.com ("Online MONOPOLY®" or "Online MONOPOLY® game" hereinafter). The Examiner indicated that the source code of the Online MONOPOLY® game was downloaded on 17 July 2003, but that the version date of the code is 28 December 2000. We respectfully traverse this rejection for two reasons.

First, there is no indication that the code of this version was accessible to the public on a date prior to filing of the instant Application. Note that public accessibility is required for a reference under 35 U.S.C. § 102(a). MPEP § 2132(I). "The statutory language 'known or used by others in this country' . . . means knowledge or use which is accessible to the public." *Id.*, *citing Carella v Starlight Archery*, 804 F.2d 135 (Fed. Cir. 1986). Assuming, for argument's sake, that the code indeed dates to 28 December 2000, mere five months before the filing date, it is not at all clear when the code became accessible to the public.

Second, the code is in HTML, the hypertext markup language. The HTML standard controls the *display* of documents, not substantive functionality of the underlying software. One definition of HTML explains the language as follows:

> HTML (Hypertext Markup Language) is the set of markup symbols or codes inserted in a file intended for display on a World Wide Web browser page. The markup tells the Web browser how to display a Web page's words and images for the user. Each individual markup code is referred to as an element (but many people also refer to it as a tag). Some elements come in pairs that indicate when some display effect is to begin and when it is to end.

Retrieved over the Internet through *whatis.com* website on 14 October 2003 (the actual URL used was http://searchwebservices.techtarget.com/sDefinition/0,,sid26_gci212286,00.html). Specifically, the HTML code of the Online MONOPOLY® does not indicate where or how the signal representing an outcome is generated, or where it is transmitted. The independent claims 1, 17, 33, 45, 81, and 95 all recite that the signal is determined "at said one terminal," *i.e.*, at the player's terminal, and not at the game server. See, for example, the "determining" step of claim 81: "determining *at said one terminal*, a signal representing said outcome to send to each of said terminals for display" (emphasis provided).

Claims 8, 11, 24, 27, 34, 46, 89, & 103

The Examiner also rejected claims 11, 27, 34, 46, 89, and 103 under U.S.C. § 103(a) as unpatentable over the Online MONOPOLY® game. It appears that the Examiner intended to reject claims 8 and 24 for the same reason. We disagree with the section 103 rejection based on the Online MONOPOLY® game for the reasons that we have already explained in relation to the section 102 rejection, immediately above.

Moreover, as regards claims 11, 27, 34, and 46, the Examiner wrote that "it would have been obvious to represent each player token with a different color. One would be motivated to do so because this would enhance the graphics on the display screen." The claims in question, however, recite the use of light emitting diodes (LEDs). Such diodes are not present on the display screen of a computer used to play Online MONOPOLY®, and they are not part of the graphics on the screen.

As regards claims 8 and 24, the Examiner wrote that "a standard modem . . . sends and receives dual tone multifrequency signals. One would be motivated to [combine] because this is a conventional way to play online games." We respectfully disagree. Dual tone multifrequency

(DTMF) signaling is a technique that uses pairs of audio frequency tones to signal the telephone company central office, with each frequency pair representing one of 16 characters: 0-9, *, #, a, b, c, and d. See, for example, REFERENCE DATA FOR ENGINEERS: RADIO, ELECTRONICS, COMPUTER, AND COMMUNICATIONS, 38-16 and 38-17 (Van Valkenberg & Middleton, eds, Newnes, 2002).

DTMF signaling is widely used for indicating a called number to the central office. It is generally not used for communicating other information through modems, and particularly DTMF signaling is not used to transmit game outcome signals via modem connections. If the Examiner believes that the fact that DTMF is used for such purposes is capable of "instant and unquestionable demonstration as being well-known" in the art, the Examiner " must provide documentary evidence . . . if the rejection is to be maintained." MPEP § 2144.03(A) & (C).

Claims 13, 29, 41, 53, 91, & 105

The Examiner rejected claims 13, 29, 41, 53, 91, and 105 as unpatentable over Online MONOPOLY® in view of U.S. Patent Application Ser. No. 09/954,436 to Eck *et al.* (Doc. No. 2002/0045484) ("Eck" hereinafter). According to the Examiner, Eck teaches, in paragraph 19, that "at least one of the terminals is a wireless telephone." We have amended claims 13, 29, 41, 53, 91, & 105 to recite that the communications link comprises a wireless communications link, that the wireless telephone is capable of establishing the wireless communications link, and that the signal representing the outcome travels over the wireless communications link. Support for the amendment can be found, for example, in paragraphs [0014] and [0015] of the instant Application. In contrast to these amended claims, Eck teaches wirelessly distributing games from a server to computing devices. See, for example, Eck, the Abstract ("A video game distribution network . . . distributes special purpose game binary image files"); Eck, paragraph 8 ("the invention relates to the use of a

generic computing network for downloading video game platform emulators and associated video games for interpretation by such emulators"); Eck, paragraph 19 ("Mobile cellular telephones . . . perform a variety of downloaded applications"). Eck does not teach establishing wireless links between communication terminals and transmitting a game signal over the wireless links.

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests reconsideration and allowance of all claims.

To discuss any matter pertaining to the instant Application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Respectfully submitted,

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